

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re:	:
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THE FINANCIAL OVERSIGHT AND	:
MANAGEMENT BOARD FOR PUERTO RICO,	: PROMESA
	: Title III
	:
as representative of	: Case No. 17-BK-3283 (LTS)
	:
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	: (Jointly Administered)
	:
Debtors. <sup>1</sup>	:

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	:
In re:	:
	:
THE FINANCIAL OVERSIGHT AND	: PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	: Title III
	:
as representative of	: Case No. 17-BK-4780 (LTS)
	:
PUERTO RICO ELECTRIC POWER AUTHORITY	: <b>This filing relates only to</b>
	: <b>Case No. 17-BK-4780 (LTS)</b>
	:
Debtor.	:

## DECLARATION OF ZACHARY S. ZWILLINGER

The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

I, ZACHARY S. ZWILLINGER, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an Associate with the law firm Paul Hastings LLP, co-counsel to the Official Committee of Unsecured Creditors of all title III Debtors (other than COFINA and PBA) (the “Committee”)<sup>2</sup> in the above-captioned case.

2. I submit this declaration in support of the *Official Committee of Unsecured Creditors’ Objection to Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928 and Bankruptcy Rules 3012(a)(1) and 9019 for Order Approving Settlements Embodied in Restructuring Support Agreement*.

3. Attached to this declaration as Exhibit 1 is a true and correct copy of a January 16, 2014 Hearing Transcript, *In re City of Detroit*, Case No. 13-53846 (Bankr. E.D. Mich.) [Docket No. 2521].

4. Attached to this declaration as Exhibit 2 is a true and correct copy of excerpts from the deposition of Natalie Jaresko.

5. Attached to this declaration as Exhibit 3 is a true and correct copy of the March 22, 2017 testimony of Stephen J. Spencer before the U.S. House Committee on Natural Resources.

6. Attached to this declaration as Exhibit 4 is a true and correct copy of PREPA Executive Session Minutes, dated April 17, 2019, PREPA\_RSA0027990 – 94, which is marked as Exhibit 10 to the deposition of Fernando Batlle.

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<sup>2</sup> The Committee is the official committee of unsecured creditors for all Title III Debtors, other than PBA and COFINA.

7. Attached to this declaration as Exhibit 5 is a true and correct copy of excerpts from the deposition of Christian Sobrino Vega.

8. Attached to this declaration as Exhibit 6 is a true and correct copy of the Trust Agreement, dated Jan. 1, 1974, as amended and supplemented through Aug. 1, 2011, from the Puerto Rico Electric Power Authority to U.S. Bank National Association.

9. Attached to this declaration as Exhibit 7 is a true and correct copy of the PREB Final Resolution and Order regarding PREPA, dated January 10, 2017.

10. Attached to this declaration as Exhibit 8 is a true and correct copy of July-August 2018 mobile messages between David Skeel and Ana Matosantos, FOMB\_9019\_MOBILE\_00000101 – 26, which is marked as Exhibit 12 to the deposition of David A. Skeel.

11. Attached to this declaration as Exhibit 9 is a true and correct copy of Amendment No. 3 to the Restructuring Settlement Agreement, dated September 9, 2019, which is marked as Exhibit 3 to the deposition of Natalie Jaresko.

12. Attached to this declaration as Exhibit 10 is a true and correct copy of excerpts from the deposition of David Brownstein.

13. Attached to this declaration as Exhibit 11 is a true and correct copy of the *Brief for Debtor-Appellee Financial Oversight and Management Board for Puerto Rico as Representative of Puerto Rico Electric Power Authority, PREPA v. Ad Hoc Group of PREPA Bondholders*, No. 17-2079 (1st Cir. Apr. 6, 2018).

14. Attached to this declaration as Exhibit 12 is a true and correct copy of a July 20, 2018 email from David Brownstein to Amy Caton, AHG-0007582 – 92, marked as Exhibit 4 to the deposition of Stephen J. Spencer.

15. Attached to this declaration as Exhibit 13 is a true and correct copy of PREPA's Conditional Motion to Make an Offsetting Change in Base Rate Changes, dated July 3, 2019, which is marked as Exhibit 3 to the deposition of Frederic Chapados.

16. Attached to this declaration as Exhibit 14 is a true and correct copy of a Reorg Research Article, "PREPA Rate Issues Spark Legislative Action, Renewed Criticism of RSA," dated October 28, 2019.

17. Attached to this declaration as Exhibit 15 is a true and correct copy of a Reorg Research Article, "PREB Halts Energy Efficiency Charge as Legislature Moves to Amend Legislation Changing Energy Efficiency Policy as It Relates to Utility Regulator's Mandate," dated October 24, 2019.

18. Attached to this declaration as Exhibit 16 is a true and correct copy of the Motion of the Financial Oversight and Management Board for Puerto Rico to Dismiss Plaintiffs' First Amended Adversary Complaint Pursuant to Fed R. Civ. P. 12(B)(1) and 12(B)(6), *Pinto Lugo v. United States*, Adv. Proc. No. 18-041-LTS (D.P.R. Aug. 23, 2018) [Docket No. 36].

19. Attached to this declaration as Exhibit 17 is a true and correct copy of the PREPA Audited Financial Statement for June 30, 2017.

20. Attached to this declaration as Exhibit 18 is a true and correct copy of the April 12, 2012 Official Statement for 2012A Power Revenue Bonds and 2012B Power Revenue Refunding Bonds.

21. Attached to this declaration as Exhibit 19 is a true and correct copy of the August 15, 2013 Official Statement for 2013A Power Revenue Bonds.

22. Attached to this declaration as Exhibit 20 is a true and correct copy of excerpts from the deposition of Stephen J. Spencer.

23. Attached to this declaration as Exhibit 21 is a true and correct copy of an Assured credit memorandum, ASSURED-PREPA-9019MOTION\_00005728.

24. Attached to this declaration as Exhibit 22 is a true and correct copy of an Assured credit memorandum, ASSURED-PREPA-9019MOTION\_00005939.

25. Attached to this declaration as Exhibit 23 is a true and correct copy of a document titled “PREPA cash in bank and time deposit accounts,” PREPA-AHBHG0017188.

26. Attached to this declaration as Exhibit 24 is a true and correct copy of excerpts from the deposition of Julie Becker.

27. Attached to this declaration as Exhibit 25 is a true and correct copy of excerpts from the deposition of Fernando Batlle.

28. Attached to this declaration as Exhibit 26 is a true and correct copy of Bruce A. Markell, *A New Perspective on Unfair Discrimination in Chapter 11*, 72 AM. BANKR. L.J. 227 (1998).

29. Attached to this declaration as Exhibit 27 is a true and correct copy of excerpts from the deposition of David A. Skeel.

30. Attached to this declaration as Exhibit 28 is a true and correct copy of an April 26, 2019 email from James Castiglioni to Fernando Batlle and Lucas Porter and copying others, attaching PREPA Discussion Materials, CGMIRSA\_001458 – 65, which is marked as Exhibit 9 to the deposition of David A. Skeel.

31. Attached to this declaration as Exhibit 29 is a true and correct copy of an April 16, 2019 email from Eduardo Arosemena Muñoz to Eli Diaz Atienza and bcc’ing Zahira Maldonado Molina, attaching draft April 17, 2019 PREPA RSA Overview and Definitive RSA,

PREPA\_RSA0029990 – 30085, which is marked as Exhibit 9 to the deposition of Fernando Batlle.

32. Attached to this declaration as Exhibit 30 is a true and correct copy of a March 28, 2019 email from David Brownstein to Fernando Batlle, PREPA\_RSA0029088 – 91, which is marked as Exhibit 15 to the deposition of Fernando Batlle.

33. Attached to this declaration as Exhibit 31 is a true and correct copy of the Energy Commission of Puerto Rico, Regulation on the Procedure for Bill Review and Suspension of Electric Service Due to Failure to Pay.

34. Attached to this declaration as Exhibit 32 is a true and correct copy of Act 57-2014.

35. Attached to this declaration as Exhibit 33 is a true and correct copy of an excerpt from PREB Regulation 8818, Section 5.08, including a certified translation.

36. Attached to this declaration as Exhibit 34 is a true and correct copy of an Official Statement, Utility Debt Securitization Authority Restructuring Bonds, Series 2017, dated October 25, 2017.

37. Attached to this declaration as Exhibit 35 is a true and correct copy of a report from Moody's Investor Service, "Utility cost recovery through securitization is credit positive," dated July 18, 2018.

38. Attached to this declaration as Exhibit 36 is a true and correct copy of a July 27, 2018 email from Rosemarie Vizcarrondo to Natalie Jaresko and copying others, FOMB\_9019\_00004698 – 701, which is marked as Exhibit 9 to the deposition of Natalie Jaresko.

39. Attached to this declaration as Exhibit 37 is a true and correct copy of the *Stipulation Concerning Certain Discovery and Evidence Relating To Concessionaires in Connection with Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant To Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(A)(I) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitations Period*, dated July 9, 2019.

40. Attached to this declaration as Exhibit 38 is a true and correct copy of an excerpt from a publicly filed PREPA mediation-related document, which is marked as Exhibit 11 to the deposition of Natalie Jaresko.

41. Attached to this declaration as Exhibit 39 is a true and correct copy of a Draft Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, PRP3\_OCUC\_00013514 – 756.

42. Attached to this declaration as Exhibit 40 is a true and correct copy of a Reorg Research Article, “Puerto Rico Energy Regulator Expects to Issue Final Order on PREPA T&D Concession During Q2 2020,” dated September 16, 2019.

43. Attached to this declaration as Exhibit 41 is a true and correct copy of excerpts from the deposition of Frederic Chapados.

44. Attached to this declaration as Exhibit 42 is a true and correct copy of excerpts from the deposition of Fermín Fontanés-Gomez.

45. Attached to this declaration as Exhibit 43 is a true and correct copy of the *Order Pursuant to 11 U.S.C. §§ 1113 and 1114(e) and Federal Rule of Bankruptcy Procedure 9019, Approving Settlement Agreements with the United Steelworkers and United Autoworkers, and Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(c), 503 and 507, Authorizing the Debtors to Enter*

*Into Plan Support Agreement, Investment Agreement and Related Agreements, In re Dana Corp.*, Case No. 06-10354-BRL (Bankr. S.D.N.Y. Aug. 1, 2007) [Docket No. 5879].

46. Attached to this declaration as Exhibit 44 is a true and correct copy of the *Order Authorizing and Approving the Equity Purchase and Commitment Agreement Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code and the Plan Framework Support Agreement Pursuant to Sections 105(a), 363(b), and 1125(e) of the Bankruptcy Code, In re Delphi Corp.*, Case No. 05-44481-RDD (Bankr. S.D.N.Y. Jan. 12, 2007) [Docket No. 6589].

47. Attached to this declaration as Exhibit 45 is a true and correct copy of Jan. 12, 2007 Hr'g Tr., *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y.) [Dkt. No. 7118].

48. Attached to this declaration as Exhibit 46 is a true and correct copy of the *Expedited Motion for Order Authorizing and Approving the Equity Purchase and Commitment Agreement Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code and the Plan Framework Support Agreement Pursuant to Sections 105(a), 363(b), and 1125(e) of the Bankruptcy Code, In re Delphi Corp.*, No. 05-44481-rdd (Bankr. S.D.N.Y. Dec. 18, 2006) [Docket No. 6179].

49. Attached to this declaration as Exhibit 47 is a true and correct copy of the *Motion of Debtors and Debtors in Possession for Entry of an Order (A) Approving Settlement Agreements with the United Steelworkers and United Autoworkers, Pursuant to 11 U.S.C. §§ 1113 and 1114(e) and Federal Rule of Bankruptcy Procedure 9019, and (B) Authorizing the Debtors to Enter Into Plan Support Agreement, Investment Agreement and Related Agreements, Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(c)(1), 503 and 507, In re Dana Corp.*, No. 06-10354-BRL (Bankr. S.D.N.Y. July 6, 2007) [Docket No. 5645].



50. Attached to this declaration as Exhibit 48 is a true and correct copy of the *Notice of Filing of Summary of Changes to the Global Settlement in Connection with Motion of Debtors and Debtors in Possession for Entry of an Order (A) Approving Settlement Agreements with the United Steelworkers and United Autoworkers, Pursuant to 11 U.S.C. §§ 1113 and 1114(e) and Federal Rule of Bankruptcy Procedure 9019, and (B) Authorizing the Debtors to Enter into Plan Support Agreement, Investment Agreement and Related Agreements, Pursuant to 11 U.S.C. §§ 105(a), 363(b), 364(c)(1), 503 and 507, In re Dana Corp.*, No. 06-10354-BRL (Bankr. S.D.N.Y. July 25, 2007) [Docket No. 5810].

51. Attached to this declaration as Exhibit 49 is a true and correct copy of the Preliminary Restructuring Settlement Agreement, dated July 30, 2018.

52. Attached to this declaration as Exhibit 50 is a true and correct copy of an article from the 41st Annual Lawrence P. King and Charles Seligson Workshop on Bankruptcy & Business Reorganization, “*Other Plan-Confirmation Issues and Beyond*,” dated September 16, 2015.

53. Attached to this declaration as Exhibit 51 is a true and correct copy of a January 28, 2019 email from Andrew Shannahan to Jorge Gana, ASSURED-PREPA-9019 MOTION\_00034736 – 37.

54. Attached to this declaration as Exhibit 52 is a true and correct copy of a July 28, 2018 email from Nancy Mitchell to Alice Byowitz and copying others, PREPA\_RSA0028512 – 21.

55. Attached to this declaration as Exhibit 53 is a true and correct copy of the Dissent of Thomas Torres to PREPA Governing Board Resolution Number 4695, dated April 17, 2019, PREPA\_RSA0027814 – 17, which is marked as Exhibit 11 to the deposition of Fernando Batlle.

56. Attached to this declaration as Exhibit 54 is a true and correct copy of a May 7, 2019 letter from Thomas Torres to Eli Diaz Atienza, PREPA\_RSA0028029 – 33, which is marked as Exhibit 12 to the deposition of Fernando Batlle.

57. Attached to this declaration as Exhibit 55 is a true and correct copy of a July 29, 2018 memorandum from Gerardo Portela Franco to the Executive Committee of Board of Directors of AAFAF, PREPA\_RSA0030157 – 159, which is marked as Exhibit 6 to the deposition of Fernando Batlle.

58. Attached to this declaration as Exhibit 56 is a true and correct copy of May 16, 2019 mobile messages between Natalie Jaresko and Edward Zayas, FOMB\_9019\_MOBILE\_00000088 – 95, which is marked as Exhibit 13 to the deposition of Natalie Jaresko.

Dated: October 30, 2019  
San Juan, Puerto Rico

/s/ Zachary S. Zwillinger

PAUL HASTINGS LLP  
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